

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of A.P. SMITH, Minor.

UNPUBLISHED

August 7, 2014

No. 319488

Eaton Circuit Court

Family Division

LC No. 12-018396-NA

Before: CAVANAGH, P.J., and OWENS and STEPHENS, JJ.

PER CURIAM.

Respondent-mother appeals as of right the trial court's order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i) (conditions leading to adjudication continue to exist), and (3)(g) (failure to provide proper care or custody). We affirm.

The termination of respondent's parental rights was based on clear and convincing evidence that, despite reasonable efforts by the Department of Human Services, respondent persisted in her drug use and lack of adequate housing. On appeal, respondent does not challenge the trial court's findings regarding the statutory grounds for termination. The sole issue on appeal is whether termination was in the minor child's best interests.

We review the trial court's factual findings regarding a child's best interests for clear error. MCR 3.977(K); *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004).

When making its best-interest determination, the trial court must consider whether the record as a whole proves by a preponderance of the evidence that termination is in the best interests of the child. *Moss*, 301 Mich App at 90. Additionally, "the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted).

Regarding the parent-child bond, the trial court found that evidence clearly indicated that the child has a strong bond of love and affection, and other emotional ties with respondent, and that the existence and strength of the bond weighed against termination.

Regarding parenting ability, the trial court looked at respondent's capacity and disposition for love, affection, and emotional ties; her capacity to provide food, clothing, and medical care; her mental and physical health, and issues of domestic violence. The trial court found that, due to serious drug abuse, respondent did not have the capacity to provide food, clothing, or medical care for the child. The trial court said that respondent could meet the child's needs when she was sober, but the record established that she was unable to maintain sobriety, and that fact called into question her capacity for love of the child and her moral fitness. The trial court emphasized the child's need for permanency, stability, and finality, stating that this factor "sums up everything that's happened to [the child] in this case." After recounting how many times the child had been moved over the course of the case, the trial court ascribed this lack of stability to the conditions created by the parents' persistent drug use. Finally, the trial court said that because of respondent's lack of stability, foster-care placement was in the child's best interests. The trial court stated that placement of the child with relatives had been attempted but ultimately proved unsuccessful.

Evaluating these factors, the trial court concluded that although there was a strong parent-child bond, this was outweighed by the severity of respondent's persistent drug use, lack of housing, and instability. The trial court found that the advantages of permanence and stability afforded to the child in his current foster care placement further supported that termination of respondent's parental rights was in the child's best interests.

Respondent argues on appeal that the totality of the circumstances do not support the trial court's ultimate decision. Respondent implies that the trial court did not assign sufficient weight to the fact that she had relapsed only three times over the course of the year, that the child's father was the reason she did not have adequate housing during the period in question, that she had left the father and now had housing and possibly a job lined up, and that the father's abusiveness was the cause of her drug use and all its consequences.

The child came under the trial court's jurisdiction because of respondent's drug use and her lack of housing and stability. Throughout the course of the year, petitioner made reasonable efforts to provide respondent with a variety of services that would assist her in being reunited with the child. Nonetheless, the conditions leading to the trial court's assumption of jurisdiction continued to exist more than a year later. Despite intermittent progress in overcoming her addiction, respondent continued to use drugs, possibly masking the extent of her usage by avoiding drug screens. Several times during the course of the year, she reported that she was on the verge of obtaining housing, but the housing never materialized. Although she blamed the child's father's abusiveness and drug use for her own drug use and its attendant consequences, respondent continued to seek him out.

Given the persistence of the initial conditions, the pattern of respondent's behavior, and the advantages of the child's foster home, the trial court did not clearly err by finding, by a preponderance of the evidence, that termination was in the best interests of the child.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Donald S. Owens

/s/ Cynthia Diane Stephens